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BEFORE THE ARIZONA CORPORATION COMMISSION**COMMISSIONERS**

KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

Arizona Corporation Commission

DOCKETED

JUN - 5 2009

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IN THE MATTER OF THE APPLICATION OF
CROSS CREEK RANCH COMMUNITY
ASSOCIATION, AN ARIZONA NON-PROFIT
CORPORATION, FOR AN ADJUDICATION
NOT A PUBLIC SERVICE CORPORATION.

DOCKET NO. W-20619A-08-0470

IN THE MATTER OF THE APPLICATION OF
CROSS CREEK RANCH WATER COMPANY
FOR THE TRANSFER OF SALE OF ITS
ASSETS TO CROSS CREEK RANCH
COMMUNITY ASSOCIATION AND
CANCELLATION OF ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. W-04131A-08-0471
DOCKET NO. W-20619A-08-0471

DECISION NO. 71103**OPINION AND ORDER**

DATE OF HEARING:

March 16, 2009

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Yvette B. Kinsey

APPEARANCES:

Mr. Patrick Black, FENNEMORE CRIAG, P.C., on
behalf of Applicant; and

Mr. Wesley Van Cleve, Staff Attorney, Legal Division,
on behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On September 8, 2008, the Cross Creek Ranch Community Association (the "Association") filed an application with the Arizona Corporation Commission ("Commission") for Adjudication Not a Public Service Corporation ("Adjudication Docket").

On the same date, Cross Creek Ranch Water Company (the "Water Company") filed an application, in Docket Nos. W-20619A-08-0471 and W-04131A-08-0417, with the Commission requesting approval to transfer its water utility assets to its sole shareholder, the Association ("Transfer Docket") and to cancel its Certificate of Convenience and Necessity ("CC&N").

1 On September 19, 2008, the Association filed the legal description for the Cross Creek Ranch
2 subdivision.

3 On the same date, the Association filed a Motion to Consolidate the Adjudication Docket and
4 the Transfer Docket. The Motion stated that the two dockets are inextricably linked and that their
5 consolidation would be administratively efficient and judicially economical.

6 On September 22, 2008, the Association filed a Notice of Errata, which provided a revised
7 legal description.

8 On October 7, 2008, the Commission's Utilities Division ("Staff") filed Insufficiency Letters
9 in the Transfer and Adjudication Dockets.

10 On October 29, 2008, the Water Company docketed responses to Staff's Insufficiency Letter
11 in the Transfer Docket.

12 On November 28, 2008, Staff filed a second Insufficiency Letter in the Adjudication and
13 Transfer Dockets.

14 On December 3, 2008, the Water Company docketed responses to Staff's second
15 Insufficiency Letter in the Transfer Docket.

16 On December 5, 2008, by Procedural Order, Staff was directed to file a response to the
17 Motion to Consolidate.

18 On the same date, the Association docketed responses to Staff's First and Second
19 Insufficiency Letters in the Adjudication Docket.

20 On December 11, 2008, Staff filed a Response to the Motion to Consolidate, stating that Staff
21 believes granting the consolidation will aid the Commission in its evaluation of both applications and
22 will not prejudice the rights of the parties.

23 On December 17, 2008, by Procedural Order, the Motion to Consolidate, Docket Nos. W-
24 020619A-08-0470, W-04131A-08-0471 and W-20619A-08-0471, was granted.

25 On December 24, 2008, Staff filed Sufficiency Letters in the consolidated docket, stating the
26 applications had met the sufficiency requirements outlined in the Arizona Administrative Code.

27 On January 9, 2009, by Procedural Order, the evidentiary hearing on the consolidated dockets
28 was scheduled to begin on March 5, 2009, and other filing deadlines were established.

1 On January 15, 2009, Staff docketed a request to change the hearing date to March 12, 2009,
2 due to the unavailability of Staff's witness.

3 On January 20, 2009, the Water Company and the Association ("Applicants") jointly filed a
4 Response to Staff's request. Applicants did not oppose Staff's request, but requested that the deadline
5 for Applicants to publish notice of the new hearing date be extended to February 6, 2009.

6 On January 21, 2009, an Amended Procedural Order was issued that rescheduled the hearing
7 to March 16, 2009, and extended the deadline for publication and mailing.

8 On February 11, 2009, Staff filed a Staff Report recommending approval of the applications
9 subject to certain conditions.

10 On February 24, 2009, the Applicants jointly filed a Certification of Publication and Proof of
11 Mailing, which stated that notice of the applications and hearing date had been published on January
12 28, 2009, in the *Sedona Red Rock*, a newspaper of general circulation and that notice had been mailed
13 to each customer on January 30, 2009.

14 On March 16, 2009, a full public hearing was held before a duly authorized Administrative
15 Law Judge of the Commission at its offices in Phoenix, Arizona. The Company and Staff appeared
16 through counsel. No members of the public were present at the hearing to give public comment. At
17 the conclusion of the hearing, the matter was taken under advisement pending submission of a
18 Recommended Opinion and Order to the Commission.

19 * * * * *

20 Having considered the entire record herein and being fully advised in the premises, the
21 Commission finds, concludes, and orders that:

22 **FINDINGS OF FACT**

23 1. The Association was established in August 13, 2002, and is an Arizona Non-Profit
24 Corporation formed for the purpose of representing homeowners who reside in the Cross Creek
25 Ranch Subdivision. Cross Creek Ranch is a 210-acre parcel comprised of 84 lots, located
26 approximately two miles southwest of Sedona, Arizona in Yavapai County, Arizona. The
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1 Association also provides wastewater utility services to the Cross Creek Ranch Subdivision.¹

2 2. The Association is in good standing with the Commission's Corporation Division.

3 3. The Water Company is an Arizona public service corporation and was granted a
4 CC&N to provide water utility service in portions of Yavapai County and specifically to the Cross
5 Creek Ranch Subdivision in Commission Decision No. 65978 (June 17, 2003). The Water Company
6 currently provides water utility service to 14 residential customers and four irrigation customers.

7 4. The Water Company is in good standing with the Commission's Corporation Division.

8 5. On October 8, 2008, the Association filed an application with the Commission for an
9 Adjudication Not a Public Service Corporation. On the same date, the Water Company filed an
10 application with the Commission for approval to transfer its water utility assets to its sole
11 shareholder, the Association, and for cancellation of its water CC&N.

12 6. On February 11, 2009, Staff filed a Staff Report recommending approval of the
13 applications, subject to certain conditions.

14 **ADJUDICATION**

15 7. On September 8, 2008, the Association filed an application with the Commission
16 requesting adjudication not a public service corporation.

17 8. The Association's application requests Commission approval for adjudication not a
18 public service corporation, so that it may assume the duties of the Water Company and provide water
19 utility services to the homeowners of the Cross Creek Ranch Subdivision. According to the
20 application, at the time the Commission granted the Water Company its CC&N, the Water Company
21 was owned by Cachet Western II, LLC ("Cachet") and Cachet built and paid for the Water
22 Company's infrastructure.² The application states the Water Company's current rates are based on
23 water usage only and were designed to provide increasing annual revenues as the utility reached the
24 projected 84 connections at final build out.³

25 9. According to the Association's application, the Water Company currently serves only
26

27 ¹ Commission Decision No. 65978, which granted the Water Company's CC&N determined the Association was not
subject to the Commission's jurisdiction because of its non-profit status. Pg. 3, FOF 13.

28 ² Application at 2.

³ Id.

1 14 residential customers and four irrigation customers and it has never reached the projected 84
 2 connections anticipated at the time the Water Company's CC&N was granted. As a result, the Water
 3 Company has been operating at a loss since it began operations.

4 10. The Association desires to take over the operations of the Water Company to eliminate
 5 certain fees, taxes, and operational expenses associated with managing a for profit entity and to
 6 eliminate duplication of insurance and accounting processes. (Tr. at 10) Further, the Association's
 7 witness testified that in the future the Water Company could make a profit and due to the
 8 Association's non-profit status, it could pose a conflict and there would be no easy way to return
 9 those profits to homeowners with the Water Company being a public service corporation. (Tr. at 9)

10 11. In Commission Decision No. 55568 (May 7, 1987), the Commission issued a policy
 11 directive regarding applications for adjudication not a public service corporation, and provided the
 12 following seven criteria for evaluation of such applications:

- 13 (i). The application must be submitted by a non-profit homeowners association;
- 14 (ii). The application must be a bona fide request by a majority of the membership
 of the association through a petition signed by 51 percent or more of the then
 existing members;
- 15 (iii). All associations making an application must have complete ownership of the
 system and necessary assets;
- 16 (iv). Every customer must be an owner/member with equal voting rights and each
 member is or will be a customer;
- 17 (v). The service area involved encompasses a fixed territory, which is not within
 18 the service area of a municipal utility or public service corporation, or if it is,
 the municipal utility or public service corporation is unable to serve;
- 19 (vi). There is a prohibition against further sub-division evidenced by deed
 20 restrictions, zoning, water restrictions, or other enforceable governmental
 regulations; and
- 21 (vii). The membership is restricted to a fixed number of customers, actual or
 potential.

22 12. According to the Association's Articles of Incorporation, the Association was
 23 incorporated as a non-profit corporation on August 13, 2002.⁴

24 13. The Association submitted into evidence the Minutes from a Special Meeting held on
 25 May 15, 2008, which shows that a majority of the Association's members voted to authorize the
 26 Board of Directors to amend the Association's Declaration of Covenants, Conditions, and
 27

28 ⁴ Association's application at Exhibit 7.

1 Restrictions ("CC&Rs") ("First Amendment") to dissolve the Water Company and assume all duties
2 and obligations of the Water Company to provide water service to the lots in the Cross Creek Ranch
3 Subdivision.⁵ The First Amendment will become effective once recorded with Yavapai County, and
4 upon approval by the Commission.

5 14. According to the First Amendment, the Association will own and operate the Water
6 Company on or after the effective date of the First Amendment. Staff recommends that the Water
7 Company file with Docket Control, as a compliance item in this docket, copies of all documentation
8 transferring ownership of the Water Company's water system and assets to the Association, within
9 180 days of the effective date of a Decision in this matter.

10 15. The First Amendment requires that each lot owner be a customer of the Association
11 and that each lot owner have one vote on all matters related to water service, regardless of the number
12 of lots owned. The Staff Report notes the Association's By-Laws do not have language mirroring
13 the requirement that every customer is a member/owner with equal voting rights. Staff recommends
14 that the Association amend its By-laws to reflect the language in the First Amendment to the CC&Rs
15 within 180 days of any decision in this matter.

16 16. The First Amendment includes language which requires that the service area
17 encompass a fixed territory which is not within the service area of a municipal utility or public
18 service corporation. Staff was unable to find language mirroring the requirement in the Association's
19 By-Laws and is therefore recommending that the Association docket as a compliance item in this
20 docket, revised By-Laws reflecting the fixed territory requirement within 180 days of any decision in
21 this matter.

22 17. The First Amendment contains language prohibiting further subdivision evidenced by
23 deed restriction, zoning, water restriction, or other enforceable governmental regulation. Staff
24 recommends that the Association file as a compliance item, a copy of the First Amendment recorded
25 with Yavapai County within 180 days of a decision in this matter, which includes the prohibition
26 against further subdivision language.

27
28 ⁵ There were 73 ballots voting in favor, 1 vote against, and 10 absent votes.

1 18. The First Amendment contains language stating the Association will provide water
2 service to 84 members and limits membership to no more than 84 members. Staff recommends that
3 the Association docket a copy of the First Amendment recorded with Yavapai County within 180
4 days of a decision in this matter, which includes the restricted membership language.

5 19. Although the First Amendment restricts the Association's membership to a fixed
6 number, prohibits further subdivision, and requires equal voting rights for all members, the By-Laws
7 allow for amendment of the CC&Rs by vote of 50 percent of the Association's members.⁶
8 Therefore, if the Association's First Amendment or By-Laws are ever changed to allow further
9 subdivision of the current 84 lots, to allow an increased number of memberships, to allow expansion
10 of the service area described in Exhibit A, or to change the equal voting rights requirements, the
11 adjudication granted by this Order should become null and void, after due process. If the Association
12 makes any of the above changes, the Association will be required to file an application for a CC&N
13 within 30 days of any of the above mentioned events.

14 20. Staff's recommendations on the Association's application for adjudication not a public
15 service corporation are reasonable and should be adopted.

16 **TRANSFER AND CANCELLATION**

17 21. The Water Company obtained a CC&N to provide water utility service to the Cross
18 Creek Ranch Subdivision in Commission Decision No. 65978 (June 17, 2003).

19 22. On September 8, 2008, the Water Company filed an application with the Commission
20 requesting authority to transfer its assets to the Association and for approval to cancel its CC&N.

21 23. The Water Company currently provides water service to the members of Cross Creek
22 Ranch subdivision and is managed by the Association, its sole shareholder. The Water Company's
23 service area encompasses a 210-acre parcel and is located approximately two miles southwest of
24 Sedona, Arizona in Yavapai County, as described in Exhibit A, attached hereto and incorporated
25 herein by reference.

26 24. According to the Engineering Report, the Water Company consists of a well, with
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28 ⁶ Cross Creek Ranch Community Association By-Laws, Section 1.8.

1 production capacity of 1,000 gallons per minute, a 250,000 gallon storage tank, a small pressure tank,
2 booster pumps, 27 fire hydrants, and a distribution system serving 16 one-inch metered connections.
3 Staff found that the average annual growth has been modest with 2-3 connections annually. Staff
4 concluded that the water system has adequate storage capacity and adequate production.

5 25. While reviewing the Water Company's application, Staff discovered that the well
6 which serves the service area is still owned by Cachet. Staff recommends that the Water Company
7 file documentation with Arizona Department of Water Resources ("ADWR") transferring ownership
8 of the well to the Association and docket proof of the Association's ownership within 180 days of a
9 decision in this matter.

10 26. According to the Staff Report, the Water Company would be transferring assets
11 consisting of booster pumps, storage and pressure tanks, main and distribution pipe, fire hydrants,
12 meters, and a building housing the pumps and emergency generator.

13 27. The Water Company's application states refunds in the amount of \$8,580 for meter
14 and service line installations and customer deposits totaling \$960 will be refunded to customers upon
15 Commission approval of the transfer of assets to the Association. The application further states there
16 are no refunds due on main extension agreements.

17 28. Because the Water Company has fewer than 15 connections, the Arizona Department
18 of Environmental Quality ("ADEQ") does not regulate the system⁷.

19 29. The Water Company's service area is not located within any Active Management Area
20 ("AMA"). According to an ADWR Water Provider Compliance Status Report dated September 15,
21 2008, the Water Company is in compliance with departmental requirements governing water
22 providers and/or community water systems.

23 30. The Water Company's witness testified that the transfer of the Water Company to the
24 Association should be seamless to customers because the same board and certified operator will
25 continue to run the Water Company and customers will be sending their bills to the same address and
26 will be charged the same rates. (Tr. at 23)

27 ⁷ The Staff Report states ADEQ considers the Water Company semi-private. Because the Water Company does not serve
28 15 or more connections for human consumption or have an average of at least 25 persons per day for at least 60 days per
year on its system, it is not subject to ADEQ regulation.

31. According to the Staff Report, the proposed transfer of the Water Company's assets to the Association will allow the Association to benefit from grants, subsidized loans, tax benefits, and lower costs for professional services. Staff further states that the proposed transfer will provide economies of scale because both water and wastewater services will be owned and managed by the Association.

32. Staff concludes the proposed transfer will not have an adverse effect on customers, service quality or operation of the company.

33. The Utilities Division Compliance database shows no outstanding compliance issues for the Water Company.

34. Staff recommends that the Water Company file copies of all documentation transferring ownership of the water system and assets to the Association within 180 days of a decision in this matter.

35. Staff further recommends that the Commission grant cancellation of the Water Company's CC&N subsequent to the Water Company's timely completion of the conditions recommended by Staff.

36. Staff's recommendations on the Water Company's application are reasonable and should be adopted.

37. The Association's witness testified that the Association is in agreement and will abide by all of Staff's recommendations.

CONCLUSIONS OF LAW

1. Cross Creek Ranch Water Company is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282 and 40-285.

2. The Commission has jurisdiction over Cross Creek Ranch Water Company and the subject matter of the applications.

3. Notice of the applications was provided in accordance with the law.

4. Subject to Staff's conditions, Cross Creek Ranch Community Association is a fit and proper entity to receive the assets of Cross Creek Ranch Water Company.

1 5. The proposed transfer of assets from Cross Creek Ranch Water Company to the Cross
2 Creek Ranch Community Association will not have an adverse effect on service quality or operation
3 of the company.

4 6. Approval of the transfer of Cross Creek Ranch Water Company's assets to the Cross
5 Creek Ranch Community Association is in the public interest.

6 7. Staff's recommendation that the cancellation of Cross Creek Ranch Water Company's
7 Certificate of Convenience and Necessity be approved subject subsequent to completion of Staff's
8 recommended conditions is reasonable.

9 8. The Cross Creek Ranch Community Association remains subject to the applicable
10 laws, regulations, and order of other regulatory agencies, including, but not limited to ADEQ, ADWR
11 and Yavapai County.

12 9. Staff's recommendations as set forth herein, are reasonable and should be adopted.

13 **ORDER**

14 IT IS THEREFORE ORDERED that the application of Cross Creek Ranch Community
15 Association for adjudication not a public service corporation is hereby granted, subject to the
16 following Ordering Paragraphs.

17 IT IS FURTHER ORDERED that Cross Creek Ranch Community Association shall file with
18 Docket Control, as a compliance item in this docket, within 180 days of the effective date of this
19 Decision, a copy of the revised By-Laws which mirrors the wording in Section 3.7 and Section 5.7 of
20 the First Amendment to the Covenants, Conditions, and Restrictions that every customer is a
21 member/owner with equal voting rights and that each member is or will be a member.

22 IT IS FURTHER ORDERED that Cross Creek Ranch Community Association shall file with
23 Docket Control, as a compliance item in this docket, within 180 days of the effective date of this
24 Decision, a copy of the revised By-Laws that mirror the required criteria found in Section 3.2 of the
25 First Amendment to the Covenants, Conditions, and Restrictions that the service area, described
26 herein at Exhibit A, encompasses a fixed territory.

27 IT IS FURTHER ORDERED that Cross Creek Ranch Community Association shall file with
28 Docket Control, as a compliance item in this docket, a copy of the First Amendment to its Covenants,

1 Conditions, and Restrictions recorded with Yavapai County which complies with Staff's
2 recommendations at Finding of Fact Nos. 14-18 and as set forth in Commission Decision No. 55568
3 (May 7, 1987), within 180 days of the effective date of this Decision.

4 IT IS FURTHER ORDERED that Cross Creek Ranch Community Association shall file with
5 the Commission's Docket Control, each year during June, beginning in 2010, an annual certification
6 by an officer that neither the recorded Covenants, Conditions, and Restrictions nor the By-laws have
7 been changed to allow further subdivision of the 84 lots in the adjudication area, to allow an increase
8 number of memberships, to allow for expansion of the area to be served, or to change the equal
9 voting requirements.

10 IT IS FURTHER ORDERED that if at any time in the future the recorded Covenants,
11 Conditions, and Restrictions or the By-Laws for Cross Creek Ranch Community Association are
12 changed to allow further subdivision of the 84 lots in the adjudication area, to allow an increased
13 number of memberships, to allow for expansion of the area to be served, or to change the equal
14 voting requirements, then the adjudication granted herein shall become null and void after due
15 process, and Cross Creek Ranch Community Association shall file an application with the
16 Commission for a Certificate of Convenience and Necessity, within 30 days of any of the above
17 mention events.

18 IT IS FURTHER ORDERED that Cross Creek Ranch Community Association is hereby
19 advised of its continuing obligations under the applicable laws, regulations and orders of other
20 regulatory agencies, including, but not limited to, the Arizona Department of Environmental Quality,
21 the Arizona Department of Water Resources and Yavapai County.

22 IT IS FURTHER ORDERED that the application of Cross Creek Ranch Water Company to
23 transfer its assets to Cross Creek Ranch Community Association is hereby granted, subject to the
24 following Ordering Paragraphs.

25 IT IS FURTHER ORDERED that Cross Creek Ranch Water Company shall file with Docket
26 Control, as a compliance item in this docket, the appropriate Arizona Department of Water Resources
27 documentation, demonstrating that the well (Registration No. 55-200896) is owned by the Cross
28 Creek Ranch Community Association, within 180 days of the effective date of this Decision.

1 IT IS FURTHER ORDERED that Cross Creek Ranch Water Company shall file with Docket
2 Control, as a compliance item in this docket, copies of all documentation transferring ownership of
3 the water system and assets to Cross Creek Ranch Community Association, within 180 days of the
4 effective date of this Decision.

5 IT IS FURTHER ORDERED that Cross Creek Ranch Water Company shall file within 30
6 days of the completion of the transfer of the water system and assets to Cross Creek Ranch
7 Community Association, an affidavit attesting that all customer deposits and refunds for meter and
8 service line installation have been returned to the customers of Cross Creek Ranch Subdivision.

9 IT IS FURTHER ORDERED that if Cross Creek Ranch Community Association and/or Cross
10 Creek Ranch Water Company fails to comply with the timeframes stated in the above Ordering
11 Paragraphs the transfer of assets and the adjudication not a public service corporation granted herein
12 shall be considered null and void, after due process.

13 IT IS FURTHER ORDERED that within 45 days upon completion of the above stated
14 conditions, Cross Creek Ranch Water Company shall filed a motion in this docket requesting that the
15 Commission cancel the Certificate of Convenience and Necessity granted in Decision No. 65978
16 (June 17, 2003).

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IT IS FURTHER ORDERED that within 30 days of Cross Creek Ranch Water Company's motion requesting cancellation of its Certificate of Convenience and Necessity, the Utilities Division Staff shall verify Cross Creek Ranch Water Company's and Cross Creek Ranch Community Association's compliance with the conditions in this Decision and prepare and docket, for Commission approval, a Recommended Opinion and Order cancelling the Certificate of Convenience and Necessity granted in Decision No. 65978.

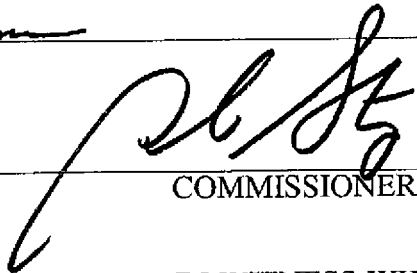
IT IS FURTHER ORDERED that this Decision shall become effective immediately.

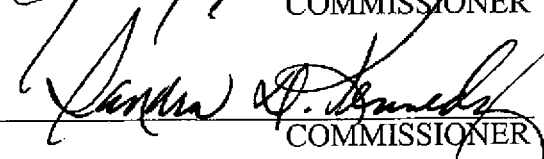
BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

IN WITNESS WHEREOF, I, MICHAEL P. KEARNS, Interim Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 5TH day of JUNE, 2009.


MICHAEL P. KEARNS
INTERIM EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
YBK:db

1 SERVICE LIST FOR:

CROSS CREEK RANCH COMMUNITY ASSOCIATION
AND CROSS CREEK RANCH WATER COMPANY

2
3 DOCKET NOS.:

W-20619A-08-0470, W-04131A-08-0471 AND W-20619A-08-0471

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EXHIBIT A

LEGAL DESCRIPTION

Cross Creek Ranch Property

A parcel of land lying within Section 33, Township 17 North, Range 5 East, Gila and Salt River Base and Meridian, Yavapai County, Arizona, more particularly described as follows:

BEGINNING at the quarter corner common to Sections 28 and 33 of the above referenced township, marked by a BLM brass cap;
 Thence along the north line of Section 33 South 87°56'46" West a distance 328.54 feet to the E-E-W 1/256 corner of Sections 28 and 33, as monumented with a rebar and cap marked "LS19853"; thence South 3°14'02" West a distance of 664.39 feet to the C-E-NE-NW 1/256 corner of Section 33, as monumented with a rebar and cap marked "LS19853"; thence North 88°18'23" East a distance of 221.45 feet to a point monumented with a rebar and cap marked "LS12535"; thence South 66°47'18" West, a distance of 168.25 feet; thence South 58°15'47" West, a distance of 387.20 feet; thence South 50°02'52" West, a distance of 344.43 feet; thence South 68°33'24" West, a distance of 114.13 feet; thence South 47°47'24" West, a distance of 305.46 feet; thence South 27°29'24" West, a distance of 165.61 feet; thence South 57°58'21" West, a distance of 215.29 feet; thence South 58°06'18" West, a distance of 236.38 feet; thence North 76°10'00" West, a distance of 413.39 feet; thence South 88°06'39" West, a distance of 281.57 feet; thence South 09°23'38" West, a distance of 335.31 feet; thence South 08°35'21" East, a distance of 301.72 feet; thence South 36°28'19" East, a distance of 432.64 feet; thence South 52°23'19" East, a distance of 500.70 feet; thence South 47°21'18" East, a distance of 99.54 feet; thence South 51°53'19" East, a distance of 150.84 feet to a point on the north-south centerline of the southwest quarter of said Section 33; thence along the north-south centerline of the southwest quarter of said Section 33, South 02°40'19" West, a distance of 101.51 feet to the C-N-SW 1/64 corner of Section 33; thence along the east-west centerline of the northeast quarter of the southwest quarter of said Section 33, North 88°59'04" East, a distance of 1308.97 feet to the C-N-S 1/64 of said Section 33, as monumented by a rebar with cap marked "LS16558"; thence along the east-west centerline of the northwest quarter of the southeast quarter of said Section 33, North 89°05'27" East, a distance of 1347.40 feet to the C-N-SE 1/64 corner of Section 33 monumented with a rebar and cap marked "LS16558"; thence along the east-west centerline of the northeast quarter of the southeast quarter, North 89°06'50" East, a distance of 673.83 feet to the NE-SE 1/64 corner of Section 33, monumented by a rebar and cap; thence along the north-south centerline of the northeast quarter of the southeast quarter of Section 33, North 04°22'51" East, a distance of 670.78 feet to the C-E-E 1/64 corner of said Section 33, monumented by a rebar and cap marked "LS16558"; thence along the east-west centerline of the section, South 88°43'01" West, a distance of 559.95 feet; a point monumented by a 1/2 inch rebar; thence North 00°09'51" East, a distance of 1207.19 feet; thence North 64°45'37" East, a distance of 109.15 feet; thence North 63°30'36" East, a distance of 414.82 feet; thence

North 05°44'16" West, a distance of 238.70 feet; thence North 61°16'15" East, a distance of 122.25 feet; thence North 10°22'37" West, a distance of 183.60 feet; thence North 13°28'37" West, a distance of 221.97 feet; thence North 36°12'37" West, a distance of 171.35 feet; thence North 31°55'37" West, a distance of 131.32 feet; thence North 37°57'37" West, a distance of 90.34 feet; thence North 75°38'37" West, a distance of 420.53 feet; thence South 77°59'37" West, a distance of 309.05 feet; thence South 62°39'37" West, a distance of 107.38 feet; thence South 56°25'57" West, a distance of 358.43 feet; thence North 42°24'23" West, a distance of 380.73 feet to a point of cusp; thence through a left curve from which the radius point bears North 39°11'35" West, northeasterly a distance of 166.96 feet along the curve concave to the northwest, having a radius of 727.01 feet and a central angle of 13°09'31" to a point of cusp which lies on the northerly line of Section 33; thence along the section line South 88°05'55" West, a distance of 324.33 feet to the point of BEGINNING.

Containing 220.98 acres, more or less.